1 Larry A. Hammond, 004049 Anne M. Chapman, 025965 2009 DEC 22 PM 2: 19 V 2 OSBORN MALEDON, P.A. Land 2929 N. Central Avenue, 21st Floor 3 Phoenix, Arizona 85012-2793 4 (602) 640-9000 6Y:- 5 Smisko lhammond@omlaw.com 5 achapman@omlaw.com 6 John M. Sears, 005617 7 P.O. Box 4080 Prescott, Arizona 86302 (928) 778-5208 8 John.Sears@azbar.org 9 Attorneys for Defendant 10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA 11 IN AND FOR THE COUNTY OF YAVAPAI 12 STATE OF ARIZONA, 13 No. P1300CR20081339 14 Plaintiff, Div. 6 15 VS. **DEFENDANT'S MOTION IN** LIMINE TO PRECLUDE THE STEVEN CARROLL DEMOCKER, **USE OF GRUESOME** 16 **PHOTOGRAPHS** Defendant. 17 (Evidentiary Hearing Requested) 18 19 20 Defendant Steven DeMocker, by and through his counsel, hereby moves this 21 Court for an Order in limine precluding the use by the State in all proceedings of 22 photographs of the victim, the crime scene, the subsequent autopsy and staged 23 photographs taken post mortem, and the forensic anthropologist's skull reconstruction 24 that are unnecessarily gruesome, inflammatory or otherwise prejudicial to Defendant in 25 this case. 26 27 28

ARGUMENT

The State has disclosed numerous photos of the victim taken at the scene, as well as autopsy photos, staged photos taken several weeks later of the body at the morgue with a golf club, and of an examination of the victim's skull conducted by a forensic anthropologist. Many of the photos are cumulative and possess no evidentiary value for the prosecution or the defense in this case, and their admission would serve only to inflame and prejudice the jury.

In our experience, the most efficient way to resolve this question is for the Court to conduct an *in camera* proceeding to review individually each photo the State proposes to offer, and to decide in each instance whether the probative value outweighs the prejudicial effect pursuant to Rule 403, Rules of Evidence. That way, the arguments on both sides can be made in a dignified and non-public proceeding, to preserve the rights of the accused and the dignity of the survivors and friends of the victim.

CONCLUSION

Defendant Steven DeMocker requests that this Court enter an Order *in limine* precluding the use by the State in all proceedings of photographs of the victim, the crime scene, the subsequent autopsy and staged photographs taken post mortem, and the forensic anthropologist's skull reconstruction that are unnecessarily gruesome, inflammatory or otherwise prejudicial to Defendant in this case.

DATED this 22 day of December, 2009.

By:

John M. Sears P.O. Box 4080 Prescott, Arizona 86302

OSBORN MALEDON, P.A. Larry A. Hammond Anne M. Chapman

2929 N. Central Avenue, Suite 2100 Phoenix, Arizona 85012-2793 Attorneys for Defendant

ORIGINAL of the foregoing filed this 220 day of December, 2009, with:

Jeanne Hicks
Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

COPIES of the foregoing delivered this day of December, 2009, to:

The Hon. Thomas B. Lindberg Judge of the Superior Court Division Six

120 S. Cortez Prescott, AZ 86303

Joseph C. Butner, Esq. Yavapai County Attorney Prescott courthouse basket